



Ms Raewyn Harlock  
Assistant Director  
Freedom of Information  
Office of the Australian Information Commissioner

**By email only to:** [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

08 August 2019

Dear Ms Harlock,

The Australian Taxation Office (ATO) welcomes the opportunity to provide a submission in response to the Office of the Australian Information Commissioner (OAIC) discussion paper on the disclosure of public servants' names and contact details in response to FOI requests.

**Consultation question 1: *Does your agency have concerns about releasing the names and contact details of staff in response to FOI requests? If so, what are your concerns? Has your agency experienced any specific work health and safety issues as a result of a person's name or contact details being released in response to an FOI request?***

The ATO generally agrees with the OAIC's view, as expressed in the FOI Guidelines (at paragraph 6.152), that it would not be unreasonable to disclose public servants' names and contact details unless special circumstances exist.

While we understand some agencies consider that the names and contact details of staff below the SES level should not be released under the *Freedom of Information Act 1982* (FOI Act), we do not consider that this class exemption type view is currently supported by the FOI Act. Instead, it is our view that this must be considered on a case-by-case basis and some special circumstance must apply so as to invoke an exemption under the FOI Act. Additionally, redacting all staff names and contact details, particularly from lengthy email correspondence chains, would be an onerous task creating considerable burden on our FOI decision makers who must work within the tight statutory timeframes of the FOI Act.

Some examples of special circumstance in which the ATO has found taxation officer names and contact details to be exempt from disclosure are discussed below.

#### *Taxation officers working on sensitive and high-risk matters*

The ATO has a responsibility to ensure its officers have a safe and healthy work environment. In cases where taxation officers are working in sensitive and high-risk areas, usually investigating the taxation implications of serious and organised crime, we are of the view that it may be appropriate to exempt those taxation officer names and contact details from release under the FOI Act. These decisions are always made on a case-by-case basis.

Taxation officers working in these areas, or on matters handled by these areas, may use pseudonyms in cases when dealing with taxpayers, and releasing their pseudonyms or actual names and contact details under the FOI Act would undermine this protection protocol. In such circumstances, the application of paragraph 37(1)(c), which exempts material which could reasonably be expected to endanger the life or physical safety of a person, may be considered. However, we acknowledge this exemption requires a reasonably high expectation of danger.

The ATO is of the view, however, that the release of the names and contact details of tax officers performing this sensitive and high-risk compliance work could reasonably be expected to have a substantial adverse effect on the management of personnel, and should be considered for exemption under paragraph 47E(c). It is reasonable to expect that taxation officers may be reluctant to work in sensitive and high-risk compliance work or with these types of cases, if their names and contact details, in the context of working on these matters, are disclosed under the FOI Act. Also, if the names and contact details of taxation officers in this area are generally released, it may also have a substantial adverse effect on the proper and efficient conduct of the operations of the ATO when it comes to monitoring and enforcing taxation obligations in the serious and organised crime area, and paragraph 47E(d) of the FOI Act should also be considered. In making an assessment as to whether or not a taxation officer's name and/or contact details are exempt from release, the FOI decision maker may consult with the officer's nominated business line contact for FOI requests, the officer themselves, and/or seek a copy of any Work Health and Safety risk assessments that may have been undertaken.

We note that our decision to exempt under paragraph 47E(c), the names and contact details of tax officers working on matters relating to serious and organised crime, has been affirmed by the former Australian Information Commissioner in *IN and Australian Taxation Office [2016] AICmr 33 (27 May 2016)*<sup>1</sup> and *JM and Australian Taxation Office [2016] AICmr 60 (19 September 2016)*<sup>2</sup>.

#### Other circumstances

The direct (i.e. desk phone) and mobile phone numbers of taxation officers – other than those previously provided directly to the FOI applicant for the purposes of receiving and/or responding to their taxation enquiries – may be exempt under paragraph 47E(d) of the FOI Act in some circumstances. Such a circumstance would be in the case of a particularly querulous complainant, being someone who contacts taxation officers on an unreasonably frequent basis and/or refuses to use the contact point, eg. a particular taxation officer, or the ATO complaints email address, that has previously been provided to the complainant. Release of taxation officers' contact details in these circumstances has the potential to result in calls to these taxation officers directly, many of whom are senior officers, or are responsible for providing internal assistance to senior officers, or are not primarily engaged in client-facing roles. Release of their direct contact numbers could allow members of the public to circumvent the appropriate avenues for communicating with the ATO and, in the case of mobile phone numbers, has the potential to result in calls to these officers outside of regular business hours as many of our more senior officers are required to be contactable on their work mobiles at all times.

Other circumstances when a taxation officer's name or contact details may be exempt include:

- the personal (not ATO issued) contact number of a taxation officer – section 47F;

---

<sup>1</sup> <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AICmr/2016/33.html>

<sup>2</sup> <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AICmr/2016/60.html>

- the ATO issued mobile number of taxation officers who are required to be contactable on that number at all times – paragraph 47E(c) and/or paragraph 47E(d) and/or section 47F;
- the personal circumstances of a taxation officer (eg. domestic violence, witness to a crime) may require extra protection of their privacy – section 47F and/or paragraph 37(1)(c);
- where there is an expectation that the documents being disclosed will generate significant interest, such as from the media, and there is a real risk of taxation officers named within the documents being contacted directly rather than contact being made through appropriate contact channels – paragraph 47E(d) and/or section 11C if publishing on the ATO's FOI disclosure log; and
- documents relating to internal investigations (including complaints) about a taxation officer – paragraph 47E(c) and/or section 45.

**Consultation question 2: *Have your agency's views on this issue changed over time? If so, please describe any factors that have affected your agency's approach, including technological, environmental or legal factors.***

Whilst the ATO has not changed our general view that taxation officers' names and contact details may be released unless special circumstances apply, we are mindful that developments in technology affects how, once disclosed, information within documents may be permanently on the public record in a readily accessible way, and can be used to identify and access a taxation officer's personal information, eg. through online research and social media accounts, and then potentially used for nefarious purposes such as identity theft.

We are also aware that technological developments have changed how documents released under the FOI Act are disseminated. For instance, disclosed documents are frequently published on the internet, either on an agency's FOI disclosure log in accordance with section 11C of the FOI Act or through other means, and may remain publically accessible indefinitely. This wider distribution affects the impact the disclosure may have on our officers if their name and/or contact details are contained within disclosed documents, and is something our FOI decision makers are conscious of when deciding whether or not information is exempt from release.

The ATO maintains a satisfactory level of control over documents published on the ATO's FOI disclosure log, which allows mistakes (for example the inadvertent release of sensitive names or contact details) to be corrected quickly and permanently. No such control exists if information is published on a third party website such as "Right to Know" (RTK).

As an administratively large agency, that processes over one thousand FOI requests and assesses hundreds of thousands of pages for release annually, it is not unexpected that the occasional error is made and a document is disclosed without all exempt material being appropriately redacted. If such a mistake is made on a document published on the ATO's FOI disclosure log, steps can immediately be taken to amend the published document. However, if such a document is published on a third party website such as RTK, this can be difficult to correct and, importantly, any amendment is at the discretion of the third party website administrator and not the ATO or even the FOI applicant.

An additional concern the ATO has with the publication of agency documents and FOI decision letters on third party websites that enable publically viewable comments to be added to the website, is that unsubstantiated comments and abuse directed towards taxation officers can be made by anyone (including anonymous individuals). Whilst we can contact third party website administrators and

request the removal of content or comments, it has been our experience that such parties are slow to respond and lack the professional standards of a government agency in regards to the content published on their website. The ATO considers it unsatisfactory for taxation officers' names and contact details to be published in the course of their duties on a public forum online, where there is no control over the content, and taxation officers may be publically subjected to abusive and defamatory comments. In the ATO's experience with the RTK website, such discourse is published immediately, without any review or consideration by the small number of RTK website administrators who are the only people able to remove material.

We note that the FOI Act provides no statutory basis for third parties to be involved in the operation and administration of the FOI Act by a Commonwealth agency in dealing with applicants or FOI applications. In an effort to manage the risks associated with the RTK website, the ATO does not email a copy of our decision letters or documents in response to RTK requests. We instead publish our decision letter and any documents being disclosed on the ATO's FOI disclosure log, and then send an email to the applicant's RTK email address with a link to the relevant entry on our disclosure log.

Additionally, the ATO is seeing an increased number of reports of scammers contacting members of the public pretending to be from the ATO. Scammers are using technology to make it look like the calls originate from a legitimate ATO phone number, including the direct numbers of individual taxation officers. This is, of course, a much broader issue for the ATO to consider than just in the context of FOI requests.

**Consultation question 3: *Does your agency advise staff, including contractors undertaking functions on behalf of the agency, that names and contact details may be released in response to an FOI request as part of your agency's training and induction programs?***

The ATO has publically published an internal document called: **Releasing employee names under the Freedom of Information Act 1982** (the Practice Statement)<sup>3</sup>. The Practice Statement is an instruction to taxation officers providing principles to be followed by our FOI decision makers when deciding whether to release a taxation officer's name under the FOI Act. The Practice Statement states that names of taxation officers appearing in documents subject to an FOI request will generally be released except in certain circumstances. The circumstances discussed in the Practice Statement are reflected in our response to consultation question 1.

We have also developed an online training package, accessible to all taxation officers, entitled **Privacy, taxpayer confidentiality & FOI**. The package advises that: *names of tax officers will generally be disclosed where the documents containing names are released administratively or under FOI, unless there is a good reason not to do so*. The package also refers taxation officers to the Practice Statement mentioned above.

**Consultation question 4: *How do you balance work health and safety considerations with the objects of the FOI Act, which include increasing public participation in Government processes with a view to promoting better-informed decision making and increasing scrutiny, discussion, comment and review of the Government's activities?***

We refer you to our comments made in response to consultation questions 1 and 2 above.

---

<sup>3</sup> <https://www.ato.gov.au/law/view/document?docid=PSR/PS20056/NAT/ATO/00001>

**Consultation question 5: *If your agency considers that disclosure of a public servant's name or contact details will negatively impact their health or safety, what evidence do you require before deciding that their name or contact details are exempt from disclosure?***

We refer you to our comments made in response to consultation question 1.

**Consultation question 6: *Do you consider the FOI Guidelines provide enough guidance for agencies when considering these issues?***

While further guidance, is always welcomed, the ATO considers the current FOI Guidelines are adequate.

**Consultation question 7: *In what circumstances do you consider that a public servant's personal information (name and contact details) are irrelevant to the FOI request?***

As detailed in the Practice Statement mentioned above, the ATO considers the circumstances in which taxation officers' names and contact details are irrelevant to an FOI request are unusual. We consider that the terms of the request would need to be so specific that they do not cover the name or contact details of the taxation officer mentioned in the relevant documents, or if the FOI applicant expressly agrees to exclude the names and contact details of taxation officers from the scope of the FOI request.

**Consultation question 8: *Where you have withheld the names and contact details of public servants, what impact does deleting this information from documents have on the time it takes to process FOI requests?***

We refer you to our comments made in response to consultation question 1. Routine deletion of names and contact details would place a considerable burden on resources for an agency processing the volume of FOI requests undertaken by the ATO.

Please do not hesitate to contact us should you have any queries or require further information.

Yours faithfully



**Jonathan Todd  
ATO General Counsel  
Assistant Commissioner  
Australian Taxation Office**

